

INDIANA UTILITY REGULATORY COMMISSION

RM 15-03

Development of Rules Regulating Sales Practices and Regulatory Compliance
Standards for Lifeline Services

Comments of Telrite Corporation d/b/a Life Wireless, Boomerang Wireless, LLC d/b/a enTouch Wireless on Second Strawman Draft

I. Introduction

Telrite Corporation d/b/a Life Wireless and Boomerang Wireless, LLC d/b/a enTouch Wireless “Joint Commenters” respectfully submit the following comments in response to the Second Strawman Draft issued in this proceeding on December 11, 2015

As noted in prior comments, Joint Commenters are wireless Eligible Telecommunications Carriers (“ETCs”) operating in Indiana today, providing wireless Lifeline service to qualifying Indiana subscribers. The issues under consideration are matters with which this group has extensive experience and expertise.

Joint Commenters appreciate modifications that the Commission has made from its first rules iteration to this more recent draft. Some of the most problematic proposed rules are no longer in this draft and Joint Commenters wish to thank the Commission and its staff for listening to concerns that we and others raised. Nonetheless, the current draft rules still contain items of concern for reasons set forth herein.

II. Comments on Draft Rules

Items in the draft rules Joint Commenters find problematic are noted in bold below.

170 IAC 7-8-3 ***Lifeline Agents***
Authority: ***IC 8-1-1-3; IC 8-1-2.6-13***
Affected: ***IC 8-1-2.6-13(c)(5)***

Sec. 3. A wireless lifeline-only ETC shall require and maintain evidence for a period of two years that each of its employees or independent agents meets the following criteria prior to the employee or independent agent interacting, on the wireless lifeline-only ETC’s behalf, with participants or prospective participants at a temporary location:

(a) The individual is at least eighteen (18) years of age.

(b) The individual has a high school diploma or the equivalent of a high school diploma.

(c) The individual has completed training on federal and state lifeline rules, enrollment procedures, and proper handling of sensitive personal information.

(d) The wireless lifeline-only ETC has proof of the following, through a criminal background check, for each jurisdiction in the United States in which the individual has lived or worked:

(1) The individual has not been convicted of a felony within the immediately preceding seven (7) years.

(2) Within the immediately preceding seven (7) years, the individual has not been released from incarceration after serving time for a felony conviction

(3) The individual has not been convicted of the following within the immediately preceding five (5) years:

(A) A misdemeanor involving fraud, deceit, or dishonesty;

(B) Battery as a misdemeanor; or

(C) Two (2) or more misdemeanors involving the illegal use of alcohol or the illegal sale, use, or possession of a controlled substance

Joint Commenters already perform criminal background checks on all candidates applying to represent their companies in Indiana and elsewhere. Life Wireless' FCC-approved Compliance Plan notes that the Company performs this check and Joint Commenters have found such checks to be a valuable tool in assessing candidates interested in representing them. Joint Commenters do not disagree that all such individuals should be at least 18 years of age and should receive training which should include information on state and federal Lifeline requirements, company enrollment procedures, and proper handling of sensitive personal information.

Nonetheless, Joint Commenters disagree with several of the requirements set forth herein. In particular, Joint Commenters disagree that all individuals representing them (distributing phones, etc.) should be required to have a high school diploma or equivalent. This rule would needlessly preclude individuals ETCs believe to be competent to do the work from doing it. Some such individuals might be in the process of pursuing a GED or equivalent while others may have decided against seeking the credential but still wish to work and are competent to do so. If an ETC is willing, following a background check and training, to take a chance on an individual who may not have a high school diploma or equivalent, why should Commission's rules disallow it?

Joint Commenters similarly disagree with the restrictions on engaging individuals with certain types of criminal histories. Joint Commenters already successfully use criminal background checks to assess the desirability of individuals to represent them in all states in which they operate. No ETC wants to engage individuals that it believes are untrustworthy or likely to do damage, treating people poorly or worse and thereby harming their brand. ETCs already have powerful incentives to make sure that individuals they select to represent them in the Lifeline space will follow the state and federal rules and applicable laws, follow all company policies and abide by the (extensive!) requirements placed upon ETCs. We believe that the portion of this rule listing certain criminal histories that cannot be accepted by ETCs as Lifeline representatives in Indiana should be deleted as it will needlessly restrict the pool of potential

representatives to the detriment of both the program and, frankly, those with certain criminal histories that need gainful employment.

Moreover, Subsections 3(b) and (d) of the proposed rule will impose record keeping and tracking burdens on ETCs that will add overhead and cost but will not measurably improve the quality of the ETC's representatives. Joint Commenters' interests are clearly aligned with the Commission's goals in that we want to ensure that the consumer's data is safe and our brand is well represented. Consequently, it is unnecessary to impose the added overhead and cost that will result from Subsections 3(b) and (d) and we urge the Commission to not adopt those portions of the proposed rule.

170 IAC 7-8-4 Temporary Structures and/or Locations

Authority: **IC 8-1-1-3; IC 8-1-2.6-13**

Affected: **IC 8-1-2.6-13**

Sec. 4. Enrollment of prospective participants in the federal lifeline program by a wireless lifeline-only ETC from a temporary structure or location is prohibited unless the following conditions are met:

(a) The name of the wireless lifeline-only ETC is visible from the exterior of the temporary structure and is written in print that is at least 12 inches in height.

*(b) All employees or agents of the wireless lifeline-only ETC must display the name of the wireless lifeline-only ETC in a prominent position **on the outermost layer of clothing in a conspicuous manner.***

(c) The terms, conditions and rates for the federal lifeline program product(s) must be prominently posted at the location where the marketing is taking place.

*(d) **The wireless lifeline-only ETC must have proof of permission, available on-site, from either the owner of the property where the marketing is taking place or from the individual or entity responsible for the property.***

*(e) **The wireless lifeline-only ETC must have all required city and county licenses necessary for selling a service at that location.***

(f) All marketing conducted or services provided by the wireless lifeline-only ETC must be provided in a manner that does not create a traffic hazard.

(g) The wireless lifeline-only ETC must provide the commission a list of locations, sent to designated commission staff by email, identifying where marketing from temporary structures and or locations has taken place in the previous month. The email shall include the date, time and location, and be submitted by the 10th day of the following month.

(h) When the wireless lifeline-only ETC provides any wireless handset in conjunction with the federal lifeline program, it must also provide a document containing, at the least, the date, time, and location the customer received the phone, the name of the wireless lifeline-only ETC, an operational customer service telephone number, and the agent's identifier. The wireless lifeline-only ETC must retain a copy of the document for a period of two years.

(i) Lifeline eligibility determinations must be conducted before the customer is enrolled in the federal lifeline program and provided with a lifeline phone.

Joint Commenters appreciate the Commission eliminating the very burdensome proposed requirement that it be informed in advance of mobile marketing sites. Such a requirement exists today in only one other state (Oklahoma) and severely hinders ETCs' ability to operate mobile marketing events there. Nonetheless, we disagree with the need and desirability of several of these proposed rules as set forth herein.

Most notably, Joint Commenters strongly disagree with the requirements in this draft rule that ETCs obtain all needed permits, licenses, etc. in order to establish a temporary location. There are already numerous state and local requirements, rules and laws in place to protect property owners from unwanted incursions onto their property. Different ETCs may do things differently but Life Wireless tasks its independent contractors with following all local permitting and licensing requirements and does not do so directly. This works for the company in all the states in which it operates (30 plus USVI and PR). Life Wireless' local contractors are better poised to know which permissions are needed to establish a temporary presence at a given location than employees at headquarters in Georgia are. Placing such requirements on the ETC would place an unnecessary burden on the ETCs and will only add to overhead and cost with no measurable improvement in the services provided. The Commission should understand that ETCs engage in marketing investment to make consumers aware of their locations (ex. listing the sites on the ETC's website). To make this investment viable, Joint Commenters are already fully motivated to make sure their locations meet all local requirements but in many instances ultimate responsibility necessarily rests with the local contractor. If a contractor establishes a location without all needed permissions, he or she is already running afoul of local permitting and perhaps licensing and other requirements and there are available enforcement mechanisms for property owners. Joint Commenters disagree that there is any need or benefit to add on top of that the ETC's potentially violating Commission rules.

Additionally, Section 4(b) would require all agents at temporary structures to display the name of the ETC on their outermost layer of clothing. Life Wireless requires its agents to wear Life Wireless branded T-shirts while engaging in mobile marketing but cannot control the outer layers of clothing such individuals might wish to wear most typically to stay warm. At Joint Commenters' mobile marketing events, the name of each company is prominently displayed and there can be no mistaking which ETC is represented regardless of whether the agent is wearing a coat over his or her ETC labeled shirt. To ensure that its mobile marketing sites are set up correctly and prominently display its logo, Life Wireless conducts "photo audits" of each and every mobile marketing location before the agent at such location can place orders. This ensures that the site is set up to the Company's specifications, compliant with all requirements and prominently shows which ETC is represented. The Commission should not require the outermost layer of clothing of each agent to display the name of the ETC.

170 IAC 7-8-5 ***Process for checking accurate subscriber address***
Authority: ***IC 8-1-1-3; IC 8-1-2.6-13***
Affected: ***IC 8-1-2.6-13(c)(5)***

Sec. 5. In addition to adherence to federal lifeline program rules, when using an online public records database to verify the address of the prospective participant and the online public records database returns an error code, or signal that the address is vacant, non-existent or otherwise non-conforming, the wireless lifeline-only ETC must obtain a document verifying the address. Appropriate documentation may include a utility bill, a driver's license, or other government identification. The wireless lifeline-only ETC must retain the documentation for a period of two years.

Joint Commenters are not clear on the purpose of this rule. Some applicants for Lifeline service are actually homeless and have no address. An ETC could not comply with this rule and serve a homeless person. Additionally, the Lifeline eligible population is highly transient and an applicant may well not have the documentation required by this rule. Perhaps a different, less burdensome solution could be found if the problem to be addressed were explicitly stated.